

## **2005 DRAFTING REQUEST**

### **Bill**

Received: **08/25/2004**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Miller (608) 266-9170**

By/Representing: **Jamie Kuhn (aide)**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact: **Betsy Abramson, Wis. State Bar E**

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Miller@legis.state.wi.us**

Carbon copy (CC:) to:

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### **Pre Topic:**

No specific pre topic given

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### **Topic:**

Guardianship reform

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### **Instructions:**

Same as 03-0039, as modified

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### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 09/17/2004			_____			
/P1	dkennedy 03/18/2005	wjackson 09/28/2004	chanaman 09/29/2004	_____			S&L
/1		kfollett 03/30/2005	jfrantze 04/04/2005	_____	sbasford 04/04/2005	sbasford 10/03/2005	

FE Sent For:

**<END>**

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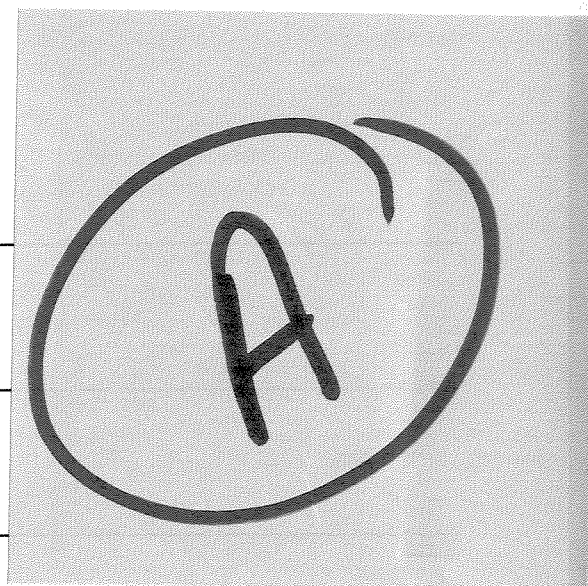
No specific pre topic given

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				_____			
				_____			

FE Sent For: *AKG 1/15f*  
*3/30* *7/3/01* *9/1/01*

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FE Sent For:

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Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Miller (608) 266-5342**

By/Representing: **Jamie Kuhn (aide)**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact: **Betsy Abramson, Wis. State Bar E**

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Miller@legis.state.wi.us**

Carbon copy (CC:) to:

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No specific pre topic given

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1/?	dkennedy	1 P11/15 9/29					

FE Sent For:

<END>

# RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman (or Lynn E. in his absence)

(Request Made By: Debra Kennedy) (Date: 9 / 17 / 04)



☐ ☒ Please transfer the drafting file for

<sup>2003</sup>  
~~2001~~ LRB 0039 to the drafting file

<sup>2005</sup>  
for ~~2003~~ LRB 0027

☒ The final version of the 2001 draft and the final Request Sheet will copied on yellow paper, and returned to the original 2001 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

☒ For research purposes, because the 2001 draft was incorporated into a 2003 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2003 drafting file. This request form will be inserted into the "guts" of the 2003 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

— OR —

☐ ☒ Please copy the drafting file for

2003 LRB 0039 (include the version) and place it in the

drafting file for 2003 LRB 0027

☒ For research purposes, because the original 2003 draft was incorporated into another 2003 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2003 drafting file. This request form will be inserted into the "guts" of the new 2003 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

☒ The original drafting file will then returned, intact, to it's folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.

## Kennedy, Debora

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**From:** Kuhn, Jamie  
**Sent:** Tuesday, January 13, 2004 7:26 PM  
**To:** Kennedy, Debora  
**Subject:** Guardianship Reform

Debora,

Rep. Miller will be the initial requester of the Guardianship Reform bill you have been working on with the Elder Law Center. This request is in response to talking with Betsy Abramson.

Please let me know if you need anything else.

Jamie Kuhn

Jamie S. Kuhn  
Office of Rep. Mark Miller  
State Capitol  
Room 112 North  
P.O. Box 8953  
Madison, WI 53708-8953  
Phone 608/266-5342  
Fax 608/282-3648

1       **AN ACT** *to renumber* 51.40 (2) (b) 2. a., b., c., and d.; *to renumber and amend* 51.40  
2       (2) (f); *to amend* 51.22 (4), 51.40 (2) (intro.), 51.40 (2) (a), 51.40 (2) (b), 51.40 (2)  
3       (b) 2. and 51.40 (2) (g) 1.; *to repeal and recreate* 51.40 (title) and 51.40 (2) (f)  
4       (title); and *to create* 51.20 (13) (g) 4., 51.40 (1) (em), 51.40 (1) (k), 51.40 (1) (l) and  
5       (m), 51.40 (2) (c), 51.40 (2) (f) 2. and 3. and 51.40 (2) (g) 6. of the statutes; **relating**  
6       **to:** venue, residency, and county of responsibility for certain proceedings under chs.  
7       51, 55, and 880.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:**

**Residency, Venue, and County of Responsibility**

Current law sets forth criteria to determine which county is responsible for the costs of services provided to an individual under chs. 46, 51, and 55.

The current criteria apply only to persons with a developmental disability or chronic mental illness. The bill replaces the term “chronic mental illness” with “serious and persistent mental illness”, to correspond to similar changes elsewhere in the bill. The bill also expands applicability of the criteria to individuals with “degenerative brain disorder “or” another like incapacity”.

The current criteria apply only to individuals in state facilities or nursing homes. The bill expands applicability of the criteria to individuals in any facility licensed or registered under ch. 50 of the statutes.

The bill specifies that the criteria apply to individuals receiving court-ordered protective services as well as placement; current law refers only to protective placement.

The bill specifies that for purposes of s. 51.40, “residence” has the meaning specified in s. 49.001 (6): “the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain”.

The bill further specifies that for purposes of s. 51.40, "voluntary" has the meaning specified in s. 49.001 (8), and amends that definition to be: "according to a person's free choice, if competent, or by choice of a guardian if incompetent, when the person is not subject to a court-ordered placement under ch. 55, or is not placed by an agency having a court-ordered involuntary commitment of the person under ch. 51 and is not involuntarily committed to the department of corrections or the department under ch. 971 or 980".

The bill authorizes the court to make a specific finding of county of residence of a person who is under a court order of commitment under ch. 51 or an order for protective placement or services after notice and an opportunity to be heard has been given to all affected counties and parties, if there is no objection. Notice must be sent to the corporation counsel of each affected county by certified mail. If there is an objection to the proposed finding of a county of residence, the county or a party may request the department to make a determination of county of responsibility. Any transfer of revenue must be suspended until the determination of county of responsibility is final.

Current law sets forth criteria to determine the residency of a person living in a nursing home. The bill specifies that determinations made pursuant to those criteria are presumptions that may be overcome by substantial evidence that clearly establishes residence in another county.

The bill specifies that placement of an individual by a county department or an agency of a county department into a facility outside the jurisdiction of the county does not transfer the individual's legal residency to the county of the facility's location. If a person is present in a county while being a resident of another county and is in need of immediate care, a county of appropriate venue may provide for the immediate needs of a person without being declared the person's county of residence.

The bill specifies that if it is not contrary to the other statutory criteria concerning residency, an individual residing in a facility who is incapable of indicating intent is a resident of the county in which he or she last resided before entering the facility.

Current law provides that a ward in a state facility or nursing home whose parent or sibling serves as his or her guardian is a resident of the guardian's county of residence if the state facility or nursing home is located in that county or if the guardian states in writing that the ward is expected to return to the guardian's county of residence when the purpose of entering the state facility or nursing home has been

accomplished or when needed care and services can be obtained in that county.

The bill substantially amends this provision as follows:

1. Amends the title of the provision to "Guardian's authority to declare county of residence".
2. Makes the provisions applicable to all guardians (not just guardians who are a parent or sibling of a ward) of wards in any facility (not just a state facility or nursing home).
3. Provides that if other criteria to determine residency do not apply, a guardian may declare a ward's county of residence to be the county where the ward is physically present if all of the following apply:

The ward's presence in the county is voluntary.

There is no ch. 55 order in effect and the ward is not under an involuntary commitment to the county, other than the county where the ward is physically present, or to the department of corrections.

The ward is living in a place of fixed habitation.

The guardian states in writing that it is the ward's intent to remain in the county for the foreseeable future.

The bill also provides that a guardian may, for good cause shown, if in the ward's best interests, clarify or change a ward's county of residence by filing with the probate court having jurisdiction of the guardianship and protective placement a written statement declaring the ward's domiciliary intent, subject to court approval, with notice and opportunity to appear by potentially affected counties and parties.

Current law provides a procedure for the department to make a determination of county of responsibility of an individual upon request. The bill specifies that any pending motion for change of venue shall be stayed until the department's determination is final. The bill also expands notice requirements pertaining to the residency determination procedure.

The bill provides that the county found to be responsible for providing services ordered under ch. 46, 51, or 55 to an individual must reimburse any other county that provided services to the individual for all services provided to the individual beginning on the date of the initial order under ch. 46, 51, or 55. Full reimbursement by the responsible county must be made within 120 days of the department's responsibility determination, or of the outcome of any appeal by the department's determination that is

brought under ch. 227, or on a date or pursuant to a schedule of two or more payments agreed to by both counties.

The bill specifies that to be eligible for protective placement or services, a person must be a resident of Wisconsin or be present in Wisconsin having a need for protective placement or services until such time as appropriate protective services can be established in the person's place of residence.

Current law specifies that a petition under ch. 55 must be filed in the county of residence of the person sought to be protected. The bill provides that the petition may be filed in the county in which the person sought to be protected is physically present under extraordinary circumstances requiring medical aid or the prevention of harm to the person or others.

The bill provides that the court in which a petition under ch. 55 or 880 is filed must determine venue. The court must direct that proper notice be given to any potentially responsible or affected county. After all potentially responsible or affected counties and parties have been given an opportunity to be heard, if it is determined that venue lies in another county, the court must order the entire record certified to the proper court. A court in which a subsequent petition is filed must, upon being satisfied of an earlier filing in another court, summarily dismiss such petition. If any county or party objects to the court's finding of venue, the issue must be referred to the department and the department must make a determination of county of responsibility pursuant to the procedure under current law. The court must suspend ruling on the motion for change of venue until the department's determination is final.

The bill provides that the county department under s. 51.42 or 51.437 to which an individual is involuntarily committed for treatment under ch. 51 retains responsibility for the person when the person voluntarily moves to another county until venue for the person is transferred to the county where the person is residing or until the person is no longer a proper subject of continued commitment.

The bill specifies that the residence of a person who is committed under ch. 51 and who is placed in a facility in another county by a county developmental disabilities board does not transfer to the county of the facility's location while the person is under commitment.

✓1      **SECTION 1.** 51.20 (13) (g) 4. of the statutes is created to read:

2            51.20 (13) (g) 4. The county department under s. 51.42 or 51.437 to which the individual  
3 is committed under par. (a) 3. retains responsibility for the person when the person voluntarily

1 moves to another county until venue for the person is transferred to the county where the  
2 person is residing or until the person is no longer a proper subject of continued commitment.

3 ✓ **SECTION 2.** 51.22 (4) of the statutes is amended to read:

4 51.22 (4) If a patient is placed in a facility authorized by a county department under s.  
5 51.42 or s. 51.437 and such placement is outside the jurisdiction of that county department  
6 under s. 51.42 or s. 51.437, the placement does not transfer the patient's legal residence to the  
7 county of the facility's location while such patient is under commitment.

8 ✓ **SECTION 3.** 51.40 (title) of the statutes is repealed and recreated to read:

9 **51.40 Determination of the residence of certain adults for purposes of determining**  
10 **county of responsibility.**

11 ✓ **SECTION 4.** 51.40 (1) (em) of the statutes is created to read:

12 51.40 (1) (em) "Facility" means any facility licensed or registered under ch. 50. *or 51*

13 ? ✗ **SECTION 5.** 51.40 (1) (k) of the statutes is created to read:

14 51.40 (1) (k) "Relative" has the meaning under s. 48.02 (15) and includes the spouse  
15 of a person.

16 ✗ **SECTION 6.** 51.40 (1) (l) and (m) of the statutes are created to read:

17 51.40 (1) (l) "Residence" has the meaning specified under s. 49.001 (6).

18 ✓ (m) "Voluntary" has the meaning specified under s. 49.001 (8).

19 **SECTION 7.** 51.40 (2) (intro.) of the statutes is amended to read:

20 51.40 (2) DETERMINATION OF RESIDENCE. (intro.) ~~For purposes of determining~~  
21 ~~responsibility for funding the provision of services under chs. 46, 51 and 55, the~~ The county  
22 of residence of ~~individuals~~ an individual aged 18 or older with a developmental disability ~~or~~  
23 ~~chronic, serious and persistent~~ mental illness ~~in state facilities or nursing homes, degenerative~~  
24 brain disorder, or another like incapacity in a facility shall be responsible for funding the

1 provision of services under chs. 46, 51, and 55, and such residency shall be determined as  
2 follows:

3 SECTION 8. 51.40 (2) (a) of the statutes is amended to read:

4 51.40 (2) (a) *Directed placement.* 1. 'Commitment or ~~protection~~ protective placement  
5 or services.' If an individual is under a court order of commitment under this chapter or  
6 protective placement or services under ~~s. 55.06~~ ch. 55, the individual remains a resident of the  
7 county in which he or she has residence at the time the initial commitment or initial order for  
8 protective placement or services is made. If the court makes no specific finding of a county  
9 of residence, the individual is a resident of the county in which the court is located. The court  
10 may make a specific finding of a county of residence, after notice and opportunity to be heard  
11 has been provided to all affected counties and parties, if there is no objection. Notice shall be  
12 sent to the corporation counsel of each affected county by certified mail. If any affected county  
13 or party objects to the proposed finding of a county of residence, the county or party may  
14 request the department to make a determination under par. (g) and any transfer of venue shall  
15 be suspended until the determination is final.

16 2. 'Placement by a county.' Except for the provision of emergency services under s.  
17 51.15, 51.42 (1) (b), 51.437 (4) (c), 51.45 (11) and (12) ~~or 55.06 (11), 55.13, or 55.135~~, if a  
18 county department or an agency of a county department arranges or makes placement of the  
19 individual into a state facility ~~or nursing home~~, the individual is a resident of the county of that  
20 county department. Placement of an individual by a county department or an agency of a  
21 county department into a facility outside the jurisdiction of the county department or agency  
22 does not transfer the individual's legal residency to the county of the facility's location. If a  
23 person is present in a county while being a resident of another county and is in need of  
24 immediate care, a county of appropriate venue may provide for the immediate needs of a

in what the  
indiv is  
present

1 person under ss. 51.15, 51.20, 51.42 (1) (b), 51.437 (4) (c), 51.45 (11) and (12), and 880.07,  
2 and ch. 55, without being declared the person's county of residence. Any agency of the county  
3 department is deemed to be acting on behalf of the county department in arranging or making  
4 placement.

5 **SECTION 9.** 51.40 (2) (b) of the statutes is amended to read:

6 ✓ 51.40 (2) (b) *Other admissions.* If par. (a) does not apply, ~~one of the following shall~~  
7 apply the county of residence shall be determined as follows:

8 **SECTION 10.** 51.40 (2) (b) 2. of the statutes is amended to read:

9 51.40 (2) (b) 2. 'Individuals in nursing homes.' The following are presumptions  
10 regarding the residence of a person in a nursing home. <sup>that</sup> ~~The presumption of residence may be~~  
11 overcome by substantial evidence that clearly establishes <sup>other</sup> residence in another county.

12 a. An individual in a nursing home who was admitted to the nursing home <sup>on or after</sup>  
13 ~~August 1, 1987,~~ <sup>that</sup> is a resident of the county ~~which approved the admission under s. 50.04 (2r).~~

14 b. An individual <sup>residing</sup> in a nursing home <sup>eff date</sup> on ~~August 1, 1987,~~ is ~~presumed to be~~ a resident of  
15 the county in which the individual is physically present unless another county <sup>after approval under s. 50.04 (2r)</sup> accepts the  
16 individual as a resident. <sup>(c)</sup> ~~The presumption of residence may be overcome by substantial~~  
17 ~~evidence which clearly establishes residence in another county in one of the following ways:~~

18 **SECTION 11.** 51.40 (2) (b) 2. a., b., c., and d. of the statutes are renumbered 51.40 (2)  
19 (b) 2. c., d., e., and f.

20 **SECTION 12.** 51.40 (2) (c) of the statutes is created to read:

21 51.40 (2) (c) If pars. (a) and (b) do not apply, an individual who is incapable of indicating  
22 intent residing in a facility is a resident of the county in which the person resided prior to  
23 entering the facility.

24 **SECTION 13.** 51.40 (2) (f) (title) of the statutes is repealed and recreated to read:

1           51.40 (2) (f) *Guardian's authority to declare county of residence.*

2           **SECTION 14.** 51.40 (2) (f) of the statutes is renumbered 51.40 (2) (f) 1. and amended to  
3 read:

4           51.40 (2) (f) 1. ~~Exception; county of guardian's residence.~~ Notwithstanding If pars. (a)  
5 and, (b), and (c) do not apply, a guardian may declare that a ward an individual in a nursing  
6 home or state facility who is incapable of indicating intent and whose parent or sibling serves  
7 as his or her guardian is a resident of the guardian's county of residence if the state guardian  
8 is a resident of the county where the facility or nursing home is located in that county or if the  
9 guardian states in writing that the individual is expected to return to the guardian's county of  
10 residence when the purpose of entering the state facility or nursing home has been  
11 accomplished or when needed care and services can be obtained in that the guardian's county  
12 of residence.

13           **SECTION 15.** 51.40 (2) (f) 2. and 3. of the statutes are created to read:

14           51.40 (2) (f) 2. If pars. (a), (b), and (c) do not apply, a guardian may declare a ward's  
15 county of residence to be the county where the ward is physically present if all of the following  
16 apply:

17           a. The ward's presence in the county is voluntary.

18           b. There is no current order under ch. 55 in effect with respect to the ward, and the ward  
19 is not under an involuntary commitment order to a county other than the county where the ward  
20 is physically present, or to the department of corrections.

21           c. The ward is living in a place of fixed habitation.

22           d. The guardian states in writing that it is the ward's intent to remain in the county for  
23 the foreseeable future.

1           3. Notwithstanding pars. (a) to (d) for good cause shown, a guardian may, if in the  
2 ward's best interest, clarify or change a ward's county of residence by filing with the probate  
3 court having jurisdiction of the guardianship and protective placement, a written statement  
4 declaring the ward's domiciliary intent, subject to court approval, if notice and opportunity  
5 to be heard are provided to all affected counties and parties. Notice shall be sent to the  
6 corporation counsel of each affected county by certified mail.

7           **SECTION 16.** 51.40 (2) (g) 1. of the statutes is amended to read:

8           51.40 (2) (g) 1. An individual, an interested person on behalf of the individual, or any  
9 county may request that the department make a determination of the county of responsibility  
10 of the individual. Any motion for change of venue pending before the court of jurisdiction  
11 shall be stayed until the determination under this paragraph is final. Within 10 days after  
12 receiving the request, the department shall provide written notice to the individual, to the  
13 individual's guardian, guardian ad litem and counsel, if any, to the individual's immediate  
14 family, if they can be located and to all potentially responsible counties that a determination  
15 of county of responsibility shall be made and that written information and comments may be  
16 submitted within 30 days after the date on which the notice is sent.

17           **SECTION 17.** 51.40 (2) (g) 6. of the statutes is created to read:

18           51.40 (2) (g) 6. The county determined to be responsible for providing care, treatment,  
19 and services ordered under ch. 46, 51, or 55 to an individual shall reimburse any other county  
20 for all care, treatment, and services that county provided to the individual under ch. 46, 51,  
21 or 55. Full reimbursement by the county determined to be responsible for the person shall be  
22 made within 120 days following the date of the department's determination of the county of  
23 responsibility, or of the outcome of any appeal of the department's determination that is

1 brought under ch. 227, or on a date or schedule of two or more payments agreed to by both  
2 parties.

3 (END)

CHANGES AS OF 11/2/04 - sent to Delinda Kennedy

6/21/04 meeting FROM THE  
LEGISLATIVE REFERENCE BUREAU

DAK-0039/P2Stat  
DAK:cjs:rs&pg ✓

Becker, Jaeger, Tamm, Abramson, Sylvestre

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

~~3/25/04~~

NOTE: All handwritten changes are  
from the State Bar's Elder Law  
Section (after consideration of comments  
from WCA, CWA, ELC & DHS)

Received July 9, 2004

**29.024 (2u) REVOCATION OF HUNTING LICENSES BASED ON INCOMPETENCY.** The department shall revoke any license authorizing hunting issued to an individual for whom the department receives a record of a declaration under s. 54.25 (2) (c) 1. d. stating that the individual is incompetent to apply for a hunting license under this chapter.

**29.161 Resident small game hunting license.** A resident small game hunting license shall be issued subject to s. ss. 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this license. The resident small game hunting license does not authorize the hunting of bear, deer, elk, or wild turkey.

**29.164 (3) (e) Notification; issuance; payment.** The department shall issue a notice of approval to those qualified applicants selected to receive a wild turkey hunting license. A person who receives a notice of approval and who pays the fee in the manner required by the department shall be issued a wild turkey hunting license subject to ss. 29.024 and 54.25 (2) (c) 1. d.

Further handwritten answers are as result of conference  
8/24/04 with Betty Abramson

29.171 (1) A resident archer hunting license shall be issued subject to s. ss. 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this license.

29.173 (1) ISSUANCE. A resident deer hunting license shall be issued subject to ~~s. ss.~~ ss. 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this license.

29.182 (4m) LIMITATION OF ONE LICENSE. A person may be issued, or transferred under ~~par. (g) sub. (4) (g),~~ only one resident elk hunting license in his or her lifetime, and the resident elk hunting license shall be valid for only one elk hunting season. The issuance, or transfer under ~~par. (g) sub. (4) (g),~~ of the license to the person is subject to ~~s. ss. 29.024 (2g) and 54.25 (2) (c) 1. d.~~

29.184 (6) (c) 1r. The department shall issue a notice of approval to those qualified applicants selected to receive a Class A bear license. A person who receives a notice of approval and who pays the fees required for the license shall be issued the license subject to ~~s. ss. 29.024 (2g) and 54.25 (2) (c) 1. d.~~

29.184 (6) (c) 2. A Class B bear license shall be issued subject to ~~s. ss. 29.024 (2g) and 54.25 (2) (c) 1. d.~~ by the department to any resident who applies for this license.

29.231 (1) A resident sports license shall be issued subject to ~~s. ss. 29.024 and 54.25 (2) (c) 1. d.~~ by the department to any resident who applies for this license, and a nonresident sports license shall be issued subject to s. 29.024 by the department to any person who is not a resident and who applies for the license.

29.235 (1) ISSUANCE. A resident conservation patron license shall be issued subject to ~~s. ss. 29.024 and 54.25 (2) (c) 1. d.~~ by the department to any resident 14 years old or older who applies for the license. A nonresident conservation patron

license shall be issued subject to s. 29.024 by the department to any person 14 years old or older who is not a resident and who applies for the license.

29.512 (1) No person may engage or be employed for any compensation or reward to guide, direct or assist any other person in hunting, fishing or trapping unless the person is issued a guide license by the department subject to ~~s.~~ ss. 29.024 and 54.25 (2) (c) 1. d. No guide license for hunting or trapping may be issued to or obtained by any person who is not a resident of this state. No guide license may be issued to any person under the age of 18 years. The holder of a guide license shall comply with all of the requirements of this chapter.

**46.011 Definitions.** (intro.) In chs. 46, 48, 50, 51, 54, 55 and 58:

#### CHAPTER 54

#### GUARDIANS <sup>HPD</sup> AND WARDS <sup>HPD</sup> & CONSERVATORS <sup>Hi</sup>

\*\*\*\*NOTE: "Guardians and Wards" is the title of ch. 880; is it what you want as the title of ch. 54?

\*\*\*\*NOTE: With respect to psychotropic medication, this is what I have done either in this redraft or previously in LRB-0039/P1:

- a. Repealed s. 880.01 (7m), stats. (the definition of "not competent to refuse psychotropic medication"), previously renumbered as s. 54.01 (11).
- b. Created s. 54.01 (18), a definition of "psychotropic medication," based on the Legislative Council draft WLC: 0220/P1.
- c. Repealed s. 880.07 (1m), stats. (allegations in a petition that a person is incompetent to refuse psychotropic medication).
- d. Stricken reference to incompetence to refuse psychotropic medication from s. 54.36 (renumbered from s. 880.33 (1), stats.).
- e. Repealed s. 880.33 (4m) and (4r), stats. (court appointment of guardian to consent or refuse, standard for forcible administration).
- f. Repealed s. 880.34 (6), stats., as does WLC: 0220/P1 (annual review, etc.).
- g. Added to s. 54.25 (2) (d) 2. a. language from WLC: 0220/P1 concerning voluntary receipt by a ward of medication, including psychotropic medication, if the ward does not protest, prohibiting the involuntary administration of psychotropic medication, defining "protest," and creating a best interest standard.
- h. Repealed s. 880.33 (2) (d), stats. (hearing on petition).

Please see my Drafter's Note concerning this topic and its treatment in this draft.

#### SUBCHAPTER I

This is all in ch. 55  
Leg. Council  
draft -  
forcing  
psych meds  
would be a  
Protective  
Service.

✓ 54001 POLICY - see enclosure

## DEFINITIONS

### 54.01 Definitions. In this chapter:

(1) "Activities of daily living" means activities relating to the performance of self care, work, and leisure activities, including <sup>(without limitation)</sup> dressing, eating, grooming, mobility, and object manipulation.

\*\*\*\*NOTE: I have in this revised definition removed "feeding," which seems unrelated to *self care*, and play, which seems redundant to "leisure."

(2) "Agency" means any public or private board, corporation, or association which, including a county department under s. 51.42 or 51.437, that is concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a county department under s. 51.42 or 51.437 individuals with developmental disability, mental illness, alcoholism, or drug dependency and of aging individuals.

(3) "Conservator" means a person who is appointed by a court at an individual's request under s. 54.76 (2) to manage the estate of the individual.

✓ \*\*\*\*  
X NOTE  
(4) "Degenerative brain disorder" means an individual's loss or disfunction of brain cells to the extent that the individual is substantially impaired in ability to provide for his or her own care or custody. — or handle financial matters... language

\*\*\*\*NOTE: This is the definition (revised grammatically) from WLC: 0037/1. Does one provide for one's own custody?

(5) "Depository account" has the meaning given in s. 815.18 (2) (e).

(6) "Durable power of attorney" has the meaning given in s. 243.07 (1) (a).

\*\*\*\*NOTE: I have renumbered most of the definitions in this draft, to account for added definitions. This subsection was originally numbered (3m) as a time-saving measure. In addition, I have not added "or s. 243.10" as requested. The definition under s. 243.07 (1) (a) subsumes the form for the Wisconsin basic power of attorney for finances and property under s. 243.10; in addition, s. 243.10 is not a definition per se; and, lastly, a defined term in the statutes that refers to another defined term may have only one referent (i.e., it may not be defined to be "A" or "B").

\*\*\*\*NOTE: Note that I have not included your proposed definition of "evaluative capacity." Please see the \*\*\*\* NOTE under the definition of "incapacity."

Ⓢ  
Change to make exactly the same as new proposed 355.01(1v)

(7) "Guardian" means ~~one~~ a person appointed by a court under s. 54.10 to ~~have~~

~~care, custody and control of the person act on behalf of a minor or an individual~~  
~~determined incompetent or the management of to manage the estate or provide for~~  
~~essential requirements for physical health or safety & the~~  
~~the personal needs~~ of a minor, an individual determined incompetent, or a  
spendthrift.

\*\*\*\*NOTE: I did not include corporate guardians or entity guardians in this definition as requested. Please look at the definition of "person" in s. 990.01 (26), stats., (which applies to all the statutes). It encompasses corporate guardian and entity guardians. This definition indicates that only a guardian of the estate is appointed for a spendthrift; correct? **NO.**

(8) "Guardian of the estate" means a guardian appointed to comply with the duties specified in s. 54.19 and to exercise any of the powers specified in s. 54.20.

(9) "Guardian of the person" means a guardian appointed to comply with the duties specified in s. 54.25 (1) and to exercise any of the powers specified in s. 54.25

(2). "Impairment" is: developmental disability, serious & persistent mental illness, degenerative brain disorder or other like incapacities  
(10) "Incapacity" means the inability of an individual effectively to receive and make or evaluate information or to communicate a decision with respect to the exercise of a like right or power.

\*\*\*\*NOTE: On Betsy Abramson's advice, this definition is the same language as that proposed in your "Appendix: Alternative Language" as the definition of "evaluative capacity," except that: (1) It is written in the negative (i.e., "inability," rather than "ability"); (2) I omitted "make [a decision]" because that seems redundant to "communicate a decision"; and (3) I omitted "decision making," because that seems unnecessary (all powers of an individual would appear to require some form of decision making). Note that this definition replaces use of the terms "incapacity," "functional capacity," and "evaluative capacity" throughout the draft, except for the term "incapacity of the guardian," which has been changed to "inability of the guardian." This change particularly affects the following: 54.01 (21), 54.15 (4), 54.21 (6) (a) and (c), 54.52 (2), and 54.68 (2) (f). After studying the issue further, I did not change the term "incapacitated" as it is used in numerous places in s. 54.50 (2) (renumbered from s. 50.06, stats.); use of that term in that subsection is subject to the definition of the term in s. 54.50 (2) (a), which limits the individual lack of capacity to health care decisions. I would think that you would want to keep this limitation. Please review.

\*\*\*\*NOTE: I have repealed the definition of "incompetent" that was amended under 03-0039/P1, because the new language proposed for s. 54.10 replaces the definition. I also have not drafted the definition of "individual found incompetent" that was proposed,

H&P  
FAMILY  
LAW §:  
is "personal  
needs" of  
a minor  
the correct  
language?

Yes  
8/24  
✓

Yes 8/24 ✓

Individual who has been designated by a court as meeting the reqs. of §54.10(3)

- 6 -

DAK-0039/P2Stat  
DAK:cjs:rs&pg

because, where the term is used, reference to s. 54.10 can be added and the defined term is then unnecessary. See, for example, this treatment in s. 54.01 (7).

( ) INCOMPETENT INDIVIDUAL -

(11) "~~Developmentally disabled person~~ Individual with developmental

disability" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for ~~mentally retarded~~ individuals with mental retardation, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody, and constitutes a substantial handicap to the afflicted individual. The term does not include a person an individual affected by <sup>dementia</sup> ~~senility~~ which is primarily caused by the process of aging or the infirmities of aging degenerative brain disorder.

(12) "Interested person" means any of the following:

(a) For purposes of a petition for guardianship or protective placement, any of the following:

\*\*\*\*NOTE: Do you intend *in this bill* to amend ch. 55 to use this definition? Where?

1. The proposed ward, if he or she has attained 14 years of age.
2. The spouse or adult child of the proposed ward, or the parent of a proposed ward who is a minor.
3. For a proposed ward who has no spouse, child, or parent, an heir, as defined in s. 851.09, of the proposed ward that may be reasonably ascertained with due diligence.

4. Any individual who is nominated as guardian or appointed to act as guardian or fiduciary for the proposed ward by a court of any state, any trustee for a trust established by or for the proposed ward, any person appointed as agent under a

is this language broad enough to address financial matters (management) too?

No 2/23

any individual who is

2/24

Stet  
8/24

as deburred in § 155.01(4)

power of attorney for health care, ~~or~~ any person appointed as attorney-in-fact under a durable power of attorney, under ch. 443, agent

\*\*\*\*NOTE: Please note that I retained "or," rather than using "and" as proposed for s. 54.01 (12) (a) 2., 3., and 4., to avoid the implication that all persons specified would be collectively required to function as "interested persons". Also, your instructions were unclear: do you wish to retain "fiduciary" in the phrase "appointed to act as ..."?

5. If the proposed ward is a minor, the individual who has exercised principal responsibility for the care and custody of the proposed ward during the period of 60 consecutive days immediately before the filing of the petition.

6. If the proposed ward is a minor and has no living parent, any individual nominated to act as fiduciary for the minor in a will or other written instrument that was executed by a parent of the minor.

7. If the proposed ward is receiving moneys paid, or if moneys are payable, by the federal department of veterans affairs, a representative of the federal department of veterans affairs, or, if the proposed ward is receiving moneys paid, or if moneys are payable, by the state department of veterans affairs, a representative of the state department of veterans affairs.

8. If the proposed ward is receiving long-term support services or similar public benefits, the county department of human services or social services that is providing the services or benefits.

9. ~~The corporation counsel of the county in which the petition is filed~~ and, if the petition is filed in a county other than the county of the proposed ward's residence, the corporation counsel of the county of the proposed ward's residence and

\*\*\*\*NOTE: I did not draft the language you proposed as a change to this subdivision from the language in LRB-0039/P1, because, under your wording, the corporation counsel of the county in which the petition is filed would *only* be included if the petition was filed in a county *other* than the county of the proposed ward's residence; I assumed that this result is not what you intend. Correct 8/24

10. Any other person required by the court.

6/21  
leave  
as  
used  
Ignore  
marking

Stat 8/24

(b) For purposes of proceedings subsequent to an order for guardianship or protective placement, ~~any~~ of the following:

No 8/24

\*\*\*\*NOTE: Do you intend in this bill to amend ch. 55 with this definition? If not, the reference to "for purposes of a petition for protective placement" should be eliminated.

\*\*\*\*NOTE: Please note that I did not make the change from "any" to "all," so as to avoid the implication that an "interested person" must include all those specified.

1. The guardian.
2. The spouse or adult child of the ward or the parent of a minor ward.
3. Any other individual that the court may require, including any fiduciary that the court may designate.

through its corporation counsel

4. The county of venue, if the county has an interest.

5. Agent under a ~~constituted~~ power of attorney.

that is not revoked or terminated by a court 8/24

(13) "Least restrictive" means that which places the least possible restriction on personal liberty and the exercise of rights and that promotes the greatest possible integration of an individual into his or her community that is consistent with meeting his or her essential requirements for health, safety, habilitation, treatment, and recovery and protecting him or her from abuse, exploitation, and neglect.

\*\*\*\*NOTE: I did not draft "constitutional" to modify rights; presumably, you don't want to limit the person to constitutionally-guaranteed rights to the exclusion of statutory rights.

(14) "Meet the essential requirements for physical health or safety" means perform those actions necessary to provide the health care, food, shelter, ~~clothes~~, <sup>clothing</sup> personal hygiene, and other care without which serious physical injury or illness will likely occur.

(15) "Physician" has the meaning given in s. 448.01 (5).

(16) "Proposed ward" means an individual, including a minor, a person alleged to be incompetent, ~~and~~ alleged spendthrift, for whom a petition for guardianship is filed.

or an 8/24

\*\*\*\*NOTE: Please review this definition. Because you have decided to include spendthrifts in ch. 54, use of this definition eliminates the necessity of specifying spendthrifts throughout the chapter, as does the definition of "ward" *ok 8/24* ✓

(17) "Psychologist" ~~has the~~ means a licensed psychologist, as defined given in s. 455.01 (4). X

(18) "Psychotropic medication" means a prescription drug, as defined in s. 450.01 (20), that is used to treat a psychiatric symptom or challenging behavior.

(19) "Serious and persistent mental illness" means a mental illness which is severe in degree and persistent in duration, which causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, which may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support and which may be of lifelong duration. "Serious and persistent mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of mental retardation or of alcohol or drug dependence.

\*\*\*\*NOTE: I included this definition (the same as s. 51.01 (3g), stats.) because the term "serious and persistent mental illness" is now used in s. 54.15 (6) and is not, at present, elsewhere defined. It contains the term "infirmities of aging," which I have changed to "degenerative brain disorder." Please review. *ok 8/24* ✓

(20) "Spendthrift" means an individual who, because of the use of alcohol or

other drugs or because of gambling or other wasteful course of conduct, is unable to

*manage effectively his or her financial affairs or*  
~~attend to business or~~ is likely to affect the health, life, or property of himself or herself

*the support of his or her*  
or others so as to endanger his or her support and dependents or expose the public  
*responsibility for his or her*  
to the support.

\*\*\*\*NOTE: I created this definition in ch. 54, instead of renumbering it from ch. 880, stats., because it is used in subchapter IV of ch. 880, stats. Do you want to move subch. IV to ch. 54? Where? Is my changed language for the definition what you want?

*yes* ✓

( ) Standby conservator

Stat  
8/24

(21) "Standby guardian" means an individual designated by the court under s. 54.52 (2) whose appointment as guardian becomes effective immediately upon the death ~~or~~ <sup>or court's removal</sup> resignation of the initially-appointed guardian, or ~~the~~ <sup>OR unwilling</sup> initially appointed guardian is temporarily or permanently unable or unavailable to fulfill his or her duties.

Successor Guardian - individual appointed under §54.54  
(22) "Ward" means an individual for whom a guardian has been appointed.

## SUBCHAPTER II

### APPOINTMENT OF GUARDIAN

#### 54.10 Appointment of guardian.

- X
- (1) A court may appoint a guardian of the person or a guardian of the estate, or both, for a proposed ward if the court determines that the individual is a minor.  
person or a guardian
- (2) A court may appoint a guardian of the estate for a proposed ward if the court determines that the individual is a spendthrift.  
or both,

\*\*\*\*NOTE: Although you indicate that you wish to include spendthrifts in ch. 54, no language proposed addresses the actual appointment or any standard to be used. I have created s. 54.10 (2) to begin to address this issue. Please review.

ok 8/24

(3) (a) A court may appoint a guardian of the person or a guardian of the estate, or both, for an individual based on a finding that the individual is incompetent only if the court finds by clear and convincing evidence that all of the following are true:

1. The individual is aged at least 17 years and 9 months.
2. For purposes of appointment of a guardian of the person, because of an impairment the individual is unable effectively to receive and evaluate information or to make <sup>or</sup> communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety.

3. For purposes of appointment of a guardian of the estate, because of an impairment, the individual is unable ~~to~~ effectively to receive and evaluate

See definition -  
(a) development  
(b) disability  
(c) serious & persistent mental illness  
(d) degenerative brain disorder  
(e) other like capacity

information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that any of the following applies:

- a. The individual has property that will be dissipated in whole or in part.
- b. The individual is unable to provide for his or her support.
- c. The individual is unable to prevent financial exploitation.
4. The individual's need for assistance in decision-making or communication

is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept.

(b) Unless the proposed ward is unable to communicate decisions effectively in any way, the determination under par. (a) may not be based on mere old age, eccentricity, poor judgment, or physical disability.

(c) In appointing a guardian under this subsection, declaring incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers it is appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2), the court shall consider all of the following:

1. The report of the guardian ad litem, as required in s. 54.40 (4) ~~(c)~~.
2. The medical or psychological statement provided under s. 54.36 and any additional medical, psychological, or other evaluation ordered by the court under s. 54.40 (4) (e) or offered by a party and received by the court.

Pursuant to a GAL request under

\*\*\*\*NOTE: Are the cross-references in par. (c) (intro.), 1., and 2. What you intend?

3. Whether the proposed ward had engaged in any advance planning
4. Whether other reliable resources are available to provide for the individual's personal needs or property management, and whether appointment of a guardian is the least restrictive means to provide for the individual's need for a substitute decision-maker.

Financial & health care decisions would be avoided by including powers of attorney, trusts, joint accounts.

BA will let me know 8/24

5. ~~1~~. The preferences, desires, and values of the individual with regard to personal needs or property management.

6. ~~2~~. The nature and extent of the individual's care and treatment needs and property and financial affairs.

7. ~~3~~. Whether the individual's situation places him or her at risk of abuse, exploitation, neglect, or violation of rights.

8. ~~4~~. Whether the individual can adequately understand and appreciate the nature and consequences of his or her impairment.

9. ~~5~~. The individual's management of the activities of daily living.

10. ~~6~~. The individual's understanding and appreciation of the nature and consequences of any inability he or she may have with regard to personal needs or property management.

11. ~~7~~. The extent of the demands placed on the individual by his or her personal needs and by the nature and extent of his or her property and financial affairs.

12. ~~8~~. Any physical illness of the individual and the prognosis of the individual.

13. ~~9~~. Any mental disability, alcoholism, or other drug dependence of the individual and the prognosis of the mental disability, alcoholism, or other drug dependence.

14. ~~10~~. Any medication with which the individual is being treated and the medication's effect on the individual's behavior, cognition, and judgment.

15. ~~11~~. Whether the effect on the individual's evaluative capacity is likely to be temporary or long-term, and whether the effect may be ameliorated by appropriate treatment.

16. ~~12~~. Other relevant evidence.

(d) Before appointing a guardian under this subsection, declaring incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers it is appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2), the court shall determine if additional medical, psychological, social, vocational, or educational evaluation is necessary for the court to make an informed decision respecting the individual's competency to exercise legal rights and may obtain assistance in the manner provided in s. 55.06 (8) whether or not protective placement is made.

(e) In appointing a guardian under this subsection, the court shall authorize the guardian to exercise only those powers under ss. 54.18, 54.20, and 54.25 (2) that are necessary to provide for the individual's personal needs and property management and to exercise the powers in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention.

(4) If the court appoints both a guardian of the person and a guardian of the estate for an individual, the court may appoint separate persons to be guardian of the person and of the estate, or may appoint one person to act as both.

(5) *FROM P. 57 - The court may appoint co-guardians of the person or co-guardians of the estate, subject to any condition that the court imposes*  
**54.12 Exceptions to appointment of guardian.** (1) SMALL ESTATES. If a a person found minor or ~~an~~ incompetent, except for his or her incapacity, is entitled to possession of possess personal property of a value of ~~valued at~~ \$20,000 or less, any court wherein in which an action or proceeding involving said the property is pending may, in its discretion, without requiring the appointment of a guardian, order that the clerk of the court do one of the following:

\*\*\*\*NOTE: I have assumed from the language in par. (a) (below) that the clerk of court would perform these functions. Correct?

*the amount specified in 5867.03*

*register in probate*

an interest-bearing

(a) Deposit the property in a ~~savings~~ account in a bank, the payment of whose accounts in cash immediately upon default of the bank are or other financial institution insured by an agency of the federal deposit insurance corporation; deposit in a ~~savings account in a savings bank or a savings and loan association that has its deposits insured by the federal deposit insurance corporation; deposit in a savings account in a credit union having its deposits guaranteed by the Wisconsin credit union savings insurance corporation or by the national board, as defined in s. 186.01 (3m);~~ government or invest the property in interest-bearing obligations of the United States. The fee for the clerk's services <sup>register in probate</sup> ~~of the clerk of court~~ in depositing and disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a).

? Amend; parent or guardian?

CHILDREN & THE LAW §  
Please answer

(b) Payment Make payment to the natural guardian of the minor or to the person having actual custody of the minor.

\*\*\*\*NOTE: The proposed material referred to "the natural guardian of the minor, as defined in sub. \_\_\_\_\_," but no definition was included, unless you were referring to the definition of "minor." What is a "natural" guardian? Is it the parent? yes

(c) Payment Make payment to the minor.

(d) Payment Make payment to the person having actual or legal custody of the person incompetent or to the person providing for the incompetent's care and maintenance for the benefit of the person found incompetent.

(e) Make payment to the agent under a durable power of attorney of the ward.

(f) make payment to the trustee of a trust created for the benefit of  
(2) INFORMAL ADMINISTRATION. If a minor or person found incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of \$5,000

\* NOTE  
\$20,000 (the amount specified in §867.03) \$10,000 or less from an estate administered through informal administration under ch. 865, the personal representative may, without the appointment of a guardian, do any of the following:

RPPT: Do we want to add this to summary and other probate procedures? Would something similar to this be necessary in a formal probate?

BA will answer 8/24

(a) With the approval of the register in probate, take one of the actions under specified in sub. (2) (1) (a) to (e).

(b) With the approval of the guardian ad litem of the minor or person found incompetent, take one of the actions under specified in sub. (2) (1) (a) to (e) and file proof of the action taken and of the approval of the guardian ad litem with the probate registrar instead of filing a receipt under s. 865.21.

(3) UNIFORM GIFTS AND TRANSFERS TO MINORS. If a minor, except for his or her incapacity, is entitled to possession of personal property of any value, any court wherein in which an action or proceeding involving the property is pending may, without requiring the appointment of a guardian, order payment, subject to any limitations the court may impose, to a custodian for the minor designated by the court under ss. 880.61 to 880.72 subch. III of ch. 880 or under the uniform gifts to minors act or uniform transfers to minors act of any other state.

\*\*\*\*NOTE: This cross-reference must be fixed if you choose to renumber the remaining subchapters in ch. 880. yes; do 8/24 ✓

### SUBCHAPTER III

#### NOMINATION OF GUARDIAN;

#### POWERS AND DUTIES; LIMITATIONS

**54.15** ~~Nomination; selection of guardians~~ Selection of guardian; nominations; preferences; other criteria. The court shall do one of the following and shall consider all of the following nominations made by any interested person and, in its discretion, shall appoint a proper guardian, having due regard for the following, applicable preferences, and criteria in determining who is appointed as guardian:

✓  
(1) OPINIONS OF PROPOSED WARD AND FAMILY. In appointing a guardian, the The court shall take into consideration the opinions of the alleged incompetent proposed ward and of the members of the his or her family as to what is in the best interests of the proposed incompetent ward. However, the best interests of the proposed incompetent ward shall control ~~in making the determination when the opinions of the family are in conflict with the clearly appropriate decision those best interests.~~

Start 8/24 ✓  
The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian.

(2) AGENT UNDER DURABLE POWER OF ATTORNEY. The court shall appoint as guardian of the estate <sup>an</sup> ~~the~~ agent under a proposed ward's durable power of attorney, unless the court finds that the appointment of <sup>an</sup> ~~the~~ agent is not in the best interests of the proposed ward.

DAK to go ✓  
\*\*\*\*NOTE: This provision is written as a requirement, as are ss. 54.15 (4) (renumbered from s. 880.09 (7)), 54.15 (5) (renumbered from s. 880.09 (2)), and 54.15 (6) (renumbered from s. 880.09 (6)); what does the judge do if they conflict?

(3) AGENT UNDER A POWER OF ATTORNEY FOR HEALTH CARE. The court shall appoint as guardian of the person the agent under a proposed ward's power of attorney for health care, unless the court finds that the appointment of the agent is not in the best interests of the proposed ward.

(4) PERSON NOMINATED BY PROPOSED WARD.

(a) Any ~~person~~ individual other than a minor aged 14 years or younger may, at such time as ~~if the person has sufficient capacity~~ individual does not have incapacity to such an extent that he or she is unable to form an intelligent preference,

(could have more than one at a time)  
Best interests 8/24  
(can only have one at a time)  
reasonable and informed

execute a written instrument, in the same manner as the execution of a will under s. 853.03, nominating a person another to be appointed as guardian of his or her person or property estate or both ~~in the event that if~~ a guardian is in the future appointed. ~~Such nominee shall be appointed as guardian by the~~ for the individual. The court shall appoint this nominee as guardian unless the court finds that the appointment of such nominee is not in the best interests of the ~~person for whom, or for whose property, the guardian is to be appointed~~ proposed ward.

CHILDREN  
& THE  
LAW:  
OK?  
?

(b) A minor ~~over~~ <sup>older</sup> 14 years ~~may~~ <sup>shall</sup> in writing in circuit court nominate his or her own guardian, but if the minor is in the armed service, is ~~without~~ outside of the state, or if other good reason exists, the court may dispense with the minor's right of nomination.

(c) If neither parent of a minor who has not attained the age of 15 is suitable and willing to be appointed guardian, the court may appoint the nominee of a minor.

\*\*\*\*NOTE: Have I amended paragraphs (b) and (c) (renumbered from s. 880.09 (1) and (3), stats.) as you wish?

WCA:  
Should we  
include  
parents of  
a person  
with serious  
and  
persistent  
mental  
illness?

(5) PREFERENCE PARENT OF A PROPOSED WARD. If one or both of the parents of a minor, ~~a developmentally disabled person or a person with other like incapacity or an individual with developmental disability~~ are suitable and willing, the court shall appoint one or both of them as guardian unless the proposed ward objects. The court shall appoint a corporate guardian under s. 880.35 ~~only if no suitable individual guardian is available.~~

YES

\*\*\*\*NOTE: Your instructions on this subsection are as follows:

"... please delete "or other person with other like incapacity" and change. Perhaps we should check with WCA as to whether there are any other situations where parents should be preferred ...?" How do you want me to change the phrase? Have you been able to check with WCA?

WCA →

Should the parent of a spendthrift receive preference under this subsection?  
(Current law does not mention parents of spendthrifts.)

NO.

(6) TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS NOMINATION BY PROPOSED WARD'S PARENTS. Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate of for any of his or her minor children who are is in need of guardianship. For a person over the age of an individual who is aged 18 or older and is found to be in need of guardianship under s. 880.33 54.10 by reason of a developmental disability or other like incapacity serious and persistent mental illness, a parent may by will nominate a testamentary guardian. The parent may waive the requirement of a bond for such an estate that is derived through a will.

OK  
Should we consider not limiting this to non-profits?

(7) NONPROFIT CORPORATION AS GUARDIAN PRIVATE NONPROFIT CORPORATION OR OTHER ENTITY. A private nonprofit corporation organized under ch. 181, 187, or 188 is qualified to act or any other nonprofit or for profit entity that is approved by the court may be appointed as guardian of the person or of the property <sup>(estate)</sup> or both, of an individual found to be in need of guardianship under s. 880.33, if a proposed ward, if no suitable individual is available as guardian and the department of health and family services, under rules established under ch. 55, finds the corporation or entity to be a suitable agency to perform such duties.

54 8/24 ✓

BA will answer 8/24  
See \*\*\*\* NOTE

\*\*\*\*NOTE: In LRB-0039/P1, I asked for an example of nonprofit entity that is not organized under ch. 181, 187, or 188, stats. Your answer was a partnership, LLC, trust, unincorporated association. Rob Marchant, our Business Associations drafter, has not heard of a non-profit LLC or partnership. Do you perhaps, instead, mean tax-exempt under 501c? Would you ever want a trust to be guardian of the person? If you are contemplating the possible appointment of all these, plus an unincorporated association as guardian, wouldn't it be simpler to refer to "person," (under the very broad meaning in s. 990.01 (26), stats., instead?

NO

\*\*\*\*NOTE: Why does DHFS promulgate these rules under ch. 55, stats? Why not under this chapter (formerly, ch. 880, stats.)?

(8) STATEMENT OF ACTS BY PROPOSED GUARDIAN. (a) At least 96 hours before the hearing under s. 54.44, the proposed guardian shall submit to the court a sworn and notarized statement as to whether any of the following is true:

1. The proposed guardian has been convicted of a crime, as defined in s. 939.12.

\*\*\*\*NOTE: Is this definition of a crime what you want? *Yes 8/24* Note that it includes misdemeanors (which are distinguished from felonies in that felonies are punishable by imprisonment in state prison, whereas misdemeanors are punishable by imprisonment in a county jail).

2. The proposed guardian has filed for or received protection under the federal bankruptcy laws.

3. Any license, certificate, permit, or registration of the proposed guardian that is required under chs. 440 to 480 or by the laws of another state for the practice of a profession or occupation has been suspended or revoked.

→ 4. The proposed guardian is listed on the ~~acceptance registry~~ under HFS ~~to AR~~ S.146.40 (4g)(a)2 ✓  
(b) If par. (a) 1., 2., or 3. applies to the proposed guardian, he or she shall include in the sworn and notarized statement a description of the circumstances surrounding the applicable event under par. (a) 1., 2., or 3.

(9) LIMITATION ON NUMBER OF WARDS OF GUARDIAN. No person, except a nonprofit corporation approved by the department of health and family services under s. 880.35, who has individual may have guardianship of the person of more than 5 or more adult wards who are unrelated to the person may accept appointment individual, except that a court may, under circumstances that the court determines are appropriate, waive this limitation to authorize appointment of the individual as guardian of the person of another adult ward unrelated to the person, unless approved by the department. No such person may accept appointment as guardian of no more than 10 such an additional 5 adult wards who are unrelated to the person individual. A corporation or entity that is approved by the department under sub. (7) is not limited in the number of adult wards for which the corporation or entity may accept appointment by a court as guardian.

#### 54.18 General duties and powers of guardian; limitations; immunity.

- (1) A ward retains all his or her rights that are not assigned to the guardian or

otherwise limited by statute. A guardian acting on behalf of a ward may exercise only those powers that the guardian is authorized to exercise by statute or court order. A guardian may be granted only those powers necessary to provide for the personal needs or property management of the ward in a manner that is appropriate to the ward and that constitutes the least restrictive form of intervention.

(2) A guardian shall do all of the following:

(a) Exercise the degree of care, diligence, and good faith when acting on behalf of a ward that an ordinarily prudent person exercises in his or her own affairs. *Not necessary unless am 881.01 (info.)*  
*Delete 8/24*  
*of the Estate shall be subject to the Uniform Prudent Investor Act under § 881.01*  
(b) Advocate for the ward's best interests, including, if the ward is protectively placed under ch. 55 and if applicable, advocating for the ward's applicable rights under ss. 50.09 and 51.61.

(c) Exhibit the utmost degree of trustworthiness, loyalty, and fidelity in relation to the ward.

(d) Notify the court of any change of address of the guardian or the ward.

(3) No guardian may do any of the following:

(a) ~~No guardian shall lend guardianship funds of the ward to himself or herself.~~ *Make a loan to any other individual or entity*  
~~unless the court first approves the terms, rate of interest, and any requirement for security.~~ *lead funds of the ward to another.*

(b) ~~No guardian shall purchase property of the ward, unless sold at public sale except at fair market value, subject to ch. 786, and with the approval of the court, and then only if the guardian is a spouse, parent, child, brother or sister of the ward or is a cotenant with the ward in the property.~~

\*\*\*\*NOTE: I corrected the numbering of the paragraphs under this subsection (I had mistakenly renumbered par. (a) from s. 880.19 (4) (c) as s. 54.18 (3) (h), rather than s. 54.18 (3) (a)).

Following the  
amendments  
procedures of  
s. 54.22

8/24

(4) Any A guardian of the person or of the estate is immune from civil liability for his or her acts or omissions in performing the duties of the guardianship if he or she performs the duties in good faith, in the best interests of the ward, and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs.

Subject to 354.18(1) and

**54.19 Duties of guardian of the estate.** Except as specifically limited in the order of appointment, the guardian of the estate shall do all of the following in order to provide a ward with the greatest amount of independence and self-determination with respect to property management in light of the ward's functional level, understanding, and appreciation of his or her functional limitations and the ward's personal wishes and preferences with regard to managing the activities of daily living:

X (1) ~~The guardian of the estate shall take~~ Take possession of all of the ward's real and personal property, and of any rents, income, ~~issues~~, and benefits therefrom, whether accruing before or after the guardian's appointment from the property, and of the any proceeds arising from the sale, mortgage, lease, or exchange thereof of the property and prepare an inventory of these. Subject to such this possession, the title of all such the estate and to the increment and proceeds thereof shall be of the estate is in the ward and not in the guardian. It is the duty of the guardian of the estate to protect and preserve it, to retain, sell and invest it as hereinafter provided, to account for it faithfully, to perform all other duties required of the guardian by law and at the termination of the guardianship to deliver the assets of the ward to the persons entitled thereto.

X (2) Retain, expend, distribute, sell, or invest the ward's property, rents, income, ~~issues~~, benefits, and proceeds and account for all of them, subject to ch. 786.

854.13 ✓ X

See 54.19 (1)  
(Intro.) as  
changed 8/24

(b)). \*\*\*\*NOTE: Please see the \*\*\*\*NOTE under s. 54.22 (renumbered from s. 880.19 (5))

(3) Determine, if the ward has executed a will, the will's location, determine the appropriate persons to be notified in the event of the ward's death, and, if the death occurs, notify those persons.

(b)). \*\*\*\*NOTE: Please see the \*\*\*\*NOTE under s. 54.22 (renumbered from s. 880.19 (5))

(4) Use the ward's income and property to maintain and support the ward and any dependents of the ward and to provide for the postsecondary education expenses of any children of the ward.

Delete - shouldn't be mandatory.  
Is a gift

(b)). \*\*\*\*NOTE: Please see the \*\*\*\*NOTE under s. 54.22 (renumbered from s. 880.19 (5))

(5) Prepare and file an annual account as specified in s. 54.62.

(6) At the termination of the guardianship, deliver the ward's assets to the persons entitled to them.

(7) Every general guardian shall With respect to claims, pay the just legally enforceable debts of the ward, out of from the ward's personal estate and the income of the ward's real estate, if sufficient, and if not, then out of the ward's real estate upon selling the same as provided by law. But a temporary guardian shall pay the debts of his or her ward only on order of the court.

(8) File, with the register of deeds of any county in which the ward possesses real property of which the guardian has <sup>(actual)</sup> knowledge, a sworn and notarized statement that specifies the legal description of the property, the date that the ward is determined to be an incompetent, and the name, address, and telephone number of the ward's guardian and any surety on the guardian's bond.

(9) Perform any other duty required by the court order.

**54.20 Powers of guardian of the estate. (1) STANDARD** (intro.) The In exercising the powers under this section, the guardian of the estate may, without the approval of the court, retain any real or personal property possessed by the ward at the time of appointment of the guardian or subsequently acquired by the ward by gift or inheritance without regard to ch. 881, so long as such retention constitutes the exercise of shall use the judgment and care under the circumstances then prevailing, which that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to including the permanent, rather than speculative, disposition of their funds, considering and consideration of the probable income as well as the probable and safety of their capital. In addition, in exercising powers and duties under this section, the guardian of the estate shall consider, consistent with the functional limitations of the ward, all of the following:

(a) The ward's understanding of the harm that he or she is likely to suffer as the result of his or her inability to manage property and financial affairs.

(b) The ward's personal preferences and desires with regard to managing his or her activities of daily living.

(c) The least restrictive form of intervention for the ward.

\*\*\*\*NOTE: Does this subsection now conform to your intent?

yes 8/24 ✓

**(2) POWERS REQUIRING COURT APPROVAL.** The guardian of the estate may do any of the following with respect to the ward <sup>is property</sup> only with the court's prior written approval following any petition <sup>and</sup> except as provided in par. (a) <sup>upon such</sup> notice, and hearing that the court requires:

(a) Make gifts, under the terms, including the frequency, amount, and donees specified by the court in approval of a petition under s. 54.21.

DAK  
ASK  
BETS ✓

✓ \*\*\*\*NOTE: Please review s. 54.20 (2) (intro.) and (a); have I now captured your intent? Yes 8/24

(b) ~~Upon petition by the guardian, a parent, the spouse, any issue or next of kin of any person, assets of the person may, in the discretion of the court and upon its order, after such notice as the court may require, be transferred~~ Transfer assets of the ward to the trustee or trustees of an any existing revocable living trust created by the person for the benefit of that the ward has created for himself or herself and those dependent upon the person for support any dependents, or, if the ward is a minor, to the trustee or trustees of a any trust created for the exclusive benefit of the person, if a minor, which ward that distributes to him or her at age 18 or 21, or, if the ward dies before age 18 or 21, to his or her estate, or as he or she appoints if he or she dies prior to age 18 or 21 the ward has appointed by a written instrument that is executed after the ward attains age 14.

\*\*\*\*NOTE: Is this provision now worded as you intend? Yes 8/24 ✓

(c) Establish a trust as specified under 42 USC 1396p (d) (4) and § 49.454 and transfer assets into the trust.

(d) Purchase an annuity or insurance contract and exercise rights to elect options or change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value.

(e) Establish Ascertain and exercise any rights available to the ward under a retirement plan or account.

\*\*\*\*NOTE: I did not draft "Establish," as proposed, because a guardian would not, for instance, have the right to establish a right in a retirement plan, did you mean "Ascertain," as I have drafted? "Make application for?"

NO, with statutory authority you could, for example, move from a

(f) Exercise any elective rights that accrue to the ward as the result of the death of the ward's spouse or parent. 401K  
to ex  
IRA

(g) Release or disclaim, under s. 854.13, any interest of the ward that is received by will, intestate succession, nontestamentary transfer at death, or other transfer.

\*\*\*\*NOTE: By "lifetime transfer," do you mean during the life of the ward? If so, "lifetime" seems unnecessary; is "other" transfer, instead, okay?

Yes 8/24

(h) A guardian of the estate appointed under this chapter for a married person may exercise with the approval of the court, except as limited under s. 880.37, any management and control right over the marital property or property other than marital property and any right in the business affairs which the married person could exercise under ch. 766 if the person were not determined under s. 880.12 to be a proper subject for guardianship. Under this section, a guardian may consent to act together in or join in any transaction for which consent or joinder of both spouses is required or may execute Execute under s. 766.58 a marital property agreement with the other ward's spouse or intended spouse, but may not make, amend or revoke a will.

Put this back in, with updated references

Codify

\*\*\*\*NOTE: I understand that, because of the creation of s. 54.21, s. 54.20 (2) (h) is ~~not intended to overrule any of~~ the court's interpretation of s. 880.173 in *The Guardianship of F.E.H.*, 154 Wis. 2d 576 (1990).

(i) Provide support for an individual whom the ward is not legally obligated to support.

(j) Convey or release a contingent or expectation interest in property, including a marital property right and any right of survivorship that is incidental to a joint tenancy or survivorship marital property.

(k) Adjust, compromise, and discharge all debts and claims for damages due the ward.

\*\*\*\*NOTE: Are these debts of the ward or debts payable to the ward? If the former, the language is redundant to s. 54.19 (7) (renumbered from s. 880.22 (1)).

(L) In all cases where in which the court deems it determines that it is advantageous to continue the business of a ward, ~~such business may be continued~~

by the guardian of the estate on such continue the business on any terms and conditions as may be specified in the order of the court.

(m) ~~The guardian or a creditor of any ward may apply~~ Apply to the court for adjustment of any claims against the ward incurred ~~prior to~~ before entry of the order appointing the guardian or the filing of a lis pendens as provided in s. 880.215 54.47. The court shall by order fix the time and place it will adjust claims and the time within which all claims ~~must~~ shall be presented ~~or be barred~~. Notice of ~~the time and place so fixed and limited~~ these times and the place shall be given by publication as ~~in estates of decedents; and all statutes relating to claims against and in favor of estates of decedents provided in s. 879.05 (4), and ch. 859 generally~~ shall apply. As ~~in the settlement of estates of deceased persons, after~~ After the court has made the order, no action or proceeding may be commenced or maintained in any court against the ward upon any claim of over which the circuit court has jurisdiction.

(3) POWERS THAT DO NOT REQUIRE COURT APPROVAL. The guardian of the estate may do any of the following without first receiving the court's approval:

(a) Provide support from the ward's estate for an individual whom the ward is legally obligated to support.

(b) Enter into a contract, other than a contract that is specified in sub. (2) or that is otherwise prohibited under this chapter.

(c) Exercise options of the ward to purchase securities or other property.

(d) Authorize access to or release of the ward's confidential <sup>financial</sup> records.

(e) Apply for public and private benefits.

(K) ~~(f)~~ Take any other action, except an action specified under sub. (2), that is reasonable or appropriate to the duties of the guardian of the estate.

<sup>f</sup>  
(g) ~~The guardian of the estate may, with the approval of the court, after such notice as the court directs, retain Retain any real or personal property possessed by that the ward at the time of the appointment of the possesses when the guardian or subsequently acquired by is appointed or that the ward acquires by gift or inheritance for such period of time as shall be designated in the order of the court approving such retention, without regard to ch. 881 during the guardian's appointment.~~

(h) <sup>g</sup>  
(h) ~~The guardian of the estate may, without approval of the court, invest Invest and reinvest the proceeds of sale of any guardianship assets of the ward and any of the ward's other moneys in the guardian's possession in accordance with ch. 881.~~

(i) <sup>h</sup>  
(i) ~~The guardian of the estate may, with the approval of the court, after Notwithstanding ch. 881, after such notice as the court directs, and subject to ch. 786, invest the proceeds of sale of any guardianship assets of the ward and any of the ward's other moneys in the guardian's possession in such the real or personal property as the court determines that is determined by the court to be in the best interests of the guardianship estate, without regard to of the ward ch. 881.~~

(g) <sup>h</sup>  
(g) ~~The guardian of the estate may, without approval of the court, sell Subject to ch. 786, sell any property of the <sup>guardianship</sup> guardianship estate of the ward that is acquired by the guardian pursuant to sub. (4) under par. (h) or (i).~~ at fair market value

(k) <sup>l</sup>  
(k) ~~The guardian shall settle Settle all <sup>(claims and)</sup> accounts of the ward and may demand, sue for, collect and receive all debts and claims for damages due him or her, or may, with the approval of the circuit court, compound and discharge the same, and shall appear for and represent his or her the ward in all actions and proceedings except where those for which another person is appointed for that purpose.~~

→ (k) from previous page

54.21 Petition to transfer ward's assets to another. (1) In this section:

unnecessary; only used in sub. (2)

Delete 8/24

close 8/24  
found 50.44 (3Ke)  
criteria

(a) "Other individual" means any of the following:

1. The ward's spouse, if any.
2. The guardian ad litem of the ward's minor child, if any.
3. The ward's disabled child, if any.

\*\*\*\*NOTE: What does "disabled" mean in this context? Developmental disability? Physical disability? — Social Security Admin. definition

4. Any of the ward's siblings who has an ownership interest in property that is co-owned with the ward.

5. Any of the ward's children who is a caregiver, as defined in s. 46.086 (1) (b), for the ward.

\*\*\*\*NOTE: Is the definition of "caregiver" suitable for your purposes?

(b) "Will or similar instrument" includes a revocable or irrevocable trust, a durable power of attorney, or a marital property agreement.

(2) A guardian or other individual who seeks an order directing the guardian of the estate to transfer any of a ward's assets to or for the benefit of any person shall submit to the court a petition that specifies all of the following:

\*\*\*\*NOTE: Wouldn't "guardian" in sub. (2) (intro.) actually be "guardian of the person," since a guardian includes a guardian of the estate? NO.

(a) Whether a proceeding by anyone seeking this authority with respect to the ward's property was previously commenced and, if so, a description of the nature of the proceeding and the disposition made of it.

(b) The amount and nature of the ward's financial obligations, including moneys currently and prospectively required to provide for the ward's maintenance, support, and well-being and to provide for others dependent upon the ward for support, regardless of whether the ward is legally obligated to provide the support. If the petitioner has access to a copy of a court order or written agreement that

This doesn't seem to work:  
1396 p(e) (4)  
↓  
1396 p(e) (1)  
(C) (1)  
↓  
1396 d (a) (7),  
(22), or (24)

provided care under cas

42 USC § 1396p (c) (2) (A) (iv)  
class MA Handbook Appendix 14.40

No 8/24

8/24

(h) Whether the G of the person and G of the estate, agrees with or objects to the transfer, if not the petitioner.  
specifies support obligations of the ward, the petitioner shall attach the copy to the petition.

(c) The property of the ward that is the subject of the petition, the proposed disposition of the property, and the reasons for the disposition.

(d) The wishes, if ascertainable, of the ward.

(e) As specified in sub. (3), whether the ward has previously executed a will or similar instrument.

(f) A description of any significant gifts or patterns of gifts that the ward has made.  
(g) The current & future effect of the proposed transfer of assets on the ward's eligibility or continued eligibility for public assistance benefits.

(i) The names, post-office addresses, and relationships to the ward of all of the following:

1. Any presumptive adult heirs of the ward who can be ascertained with Reasonable diligence.

2. If the ward has previously executed a will or similar instrument, the named

or described beneficiaries, if known, under the most recent will or similar instrument executed by the ward.

(3) (a) If a ward has previously executed a will or similar instrument, and the petitioner is able, with reasonable diligence, to obtain a copy, the petitioner shall provide the copy to the court, together with a statement that specifies all of the following:

1. The manner in which the copy was secured.

2. The manner in which the terms of the will or similar instrument became known to the petitioner.

3. The basis for the petitioner's belief that the copy is of the ward's most recently executed will or similar instrument.

✓  
(b) If the petitioner is unable to obtain a copy of the most recently executed will <sup>or other dispositive estate planning document</sup> or ~~or similar instrument~~ or is unable to determine if the ward has previously executed <sup>other dispositive estate planning document</sup> a will or ~~similar instrument~~, the petitioner shall provide a statement to the court that specifies the efforts that were made by the petitioner to obtain a copy or ascertain the information.

(c) If a copy of the most recently executed will <sup>or other dispositive estate planning document</sup> or ~~similar instrument~~ is not otherwise available, the court may order the person who has the original will or <sup>other dispositive estate planning document</sup> ~~similar instrument~~ to provide a photocopy to the court for in camera examination. The court may provide the photocopy to the parties to the proceeding unless the court finds that doing so is contrary to the ward's best interests.

(d) The petitioner and the court shall keep confidential the information in a will <sup>or other dispositive estate planning document</sup> or ~~similar instrument~~, or a copy of the will or <sup>other dispositive estate planning document</sup> ~~similar instrument~~, under this subsection, and may not, unless otherwise authorize, disclosed that information.

\*\*\*\*NOTE: Does this paragraph meet your intent?

(4) The petitioner shall serve notice upon all of the following, together with a copy of the petition, stating that the petitioner will move the court, at a time and place named in the notice, for the order described in the petition:

(a) If not the same as the petitioner, the guardian of the person and the guardian of the estate.

(b) Unless the court dispenses with notice under this subsection, the persons specified in sub. (2) (g), if known to the petitioner.

(c) The county corporation counsel, if the county has an interest in the matter.

\*\*\*\*NOTE: This means that the petitioner determines whether the county has an interest and gets notice. Is that okay? yes 8/24 ✓

(5) The court shall consider all of the following in reviewing the petition:

(a) The wishes of the ward, if known.

(b) Whether the duration of the ward's disability is likely to be sufficiently brief so as to justify dismissal of the proceedings in anticipation of the ward's recovered ability to decide whether, and to whom, to transfer his or her assets.

(c) Whether the proposed transfer will benefit the ward, the ward's estate, or members of the ward's immediate family.

\*\*\*\*NOTE: I understand that this provision is sought to codify *Matter of Guardianship of F.E.H.*, 154 Wis. 2d 576 (1990). Therefore, I included "immediate" as an adjective modifying "family".

and expanding its holding to unmarried wards as well.

(d) ~~Except for gifting that is authorized under s. 54.20 (2) (a),~~ whether the donees or beneficiaries under the proposed disposition are reasonably expected objects of the ward's generosity and whether the proposed disposition is consistent with any ascertained wishes of the ward or known estate plan or pattern of lifetime gifts that he or she has made.

(e) Whether the proposed disposition will produce tax savings that will significantly benefit the ward, his or her dependents, or other persons for whom the ward would be concerned.

(f) The factors specified in sub. (2) (a) to (g) and any statements or other evidence under sub. (3).

(g) Any other factors that the court determines are relevant.

(6) The court may grant the petition under sub. (2) and enter an order <sup>authorizing and</sup> directing the guardian of the estate to take action requested in the petition, if the court finds and records all of the following:

(a) That the ward has incapacity to perform the act for which approval is sought and the incapacity is not likely to change positively within a reasonable period of time.

Should "disability" be "impairment"?  
Yes 8/24

(i)?  
Yes  
8/24